



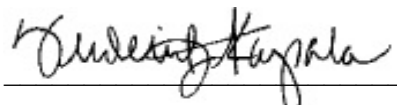
the petitioner.” A claim must be presented as a federal constitutional claim in the state court proceedings in order to be exhausted. See Duncan v. Henry, 513 U.S. 364, 365-66 (1995). It is clear from the record that petitioner’s § 2254 grounds five through seven were not presented to the Illinois courts as federal constitutional claims and, therefore, are not exhausted. See People v. Gakuba, 2017 IL App (2d) 150744-U.

In particular, with regard to ground five, the Illinois Appellate Court rejected petitioner’s contention that the trial court erred in denying his motions to disqualify the assistant state’s attorney because it abused its discretion under the standard delineated in Marshall v. County of Cook, 2016 IL App (1st) 142864, ¶ 22, and violated the Illinois Counties Code, 55 ILCS 5/4-2003. Gakuba, 2017 IL App (2d) 150744-U, ¶¶ 91-99. As for ground six, the Illinois Appellate Court rejected petitioner’s contention that the trial court erred in denying his motions to substitute two judges pursuant to 725 ILCS 5/114-5. The Court held that the trial court’s finding that there was no indicia of judicial prejudice against petitioner was not against the manifest weight of the evidence as that standard has been articulated by the Illinois Supreme Court in People ex rel. Baricevic v. Wharton, 136 Ill. 2d 423, 439 (1990), and People v. Patterson, 192 Ill. 2d 93, 131 (2000). Id. ¶ 102. With respect to ground seven, in rejecting petitioner’s sentencing arguments, the Illinois Appellate Court held that the trial court did not abuse its discretion under Illinois law in choosing incarceration over probation, id. ¶ 115, or in imposing consecutive sentences under 730 ILCS 5/5-8-4(b), id. ¶ 117.

Thus, the record is clear that grounds five through seven were not presented as federal constitutional claims nor decided as such. Those grounds are dismissed without prejudice for failure to exhaust. Consequently, petitioner will be permitted to proceed on only grounds one through four.

Date: 11/20/2017

ENTER:

A handwritten signature in black ink, appearing to read "Frederick J. Kapala", written over a horizontal line.

FREDERICK J. KAPALA

District Judge